

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

MIASHARI FOX,

Petitioner,

V.

ATTORNEY GENERAL OF THE
STATE OF NEW JERSEY, et al.,

Respondents.

Civ. No. 18-5860 (PGS)

MEMORANDUM AND ORDER

Petitioner is a state prisoner proceeding *pro se* with a petition for writ of habeas corpus filed pursuant to 28 U.S.C. § 2254. On September 16, 2020, this Court denied Petitioner's habeas petition. (*See* ECF 18). Presently pending before this Court is Petitioner's motion to file a notice of appeal out of time (ECF 19), and a motion to proceed *in forma pauperis* on appeal. (*See* ECF 21). Considering these filings, the Clerk will reopen this case so they can be adjudicated. For the following reasons, Petitioner's motion to file a notice of appeal out of time is granted, but Petitioner's motion to proceed *in forma pauperis* on appeal is denied without prejudice.

As noted above, this Court denied Petitioner's habeas petition on September 16, 2020. In a document dated October 21, 2020, Petitioner filed her motion to file a notice of appeal out of time as well as her actual notice of appeal. (*See* ECF 19 & 20). Petitioner states in her motion that her movements within her prison have been limited due to the COVID-19 pandemic such that it affected her ability to go to the prison law library and file a timely notice of appeal.

Generally, a petitioner must file his notice of appeal within thirty (30) days from the entry of the order. *See* Fed. R. App. P. 4(a)(1)(A). However, Federal Rule of Appellate Procedure 4(a)(5)(A) permits a district court to extend the time to file a notice of appeal if: “(i) the party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires; and (ii)

regardless of whether its motion is filed before or during the 30 days after the time prescribed by this Rule 4(a) expires, that party shows excusable neglect or good cause.”

Petitioner filed her motion within thirty days after the time prescribed by Rule 4(a) expired. Furthermore, given the COVID-19 pandemic, Petitioner has adequately shown good cause for not filing her notice of appeal within thirty days. Accordingly, the motion to file an appeal out of time is granted.

Petitioner has also filed a motion to proceed *in forma pauperis* on appeal. The United States Court of Appeals for the Third Circuit’s Local Rules though require a petitioner to attach a certified copy of the prison account statement for the six-month period preceding the filing of the notice of appeal. *See* 3d Cir. L. App. R. 24.1(c). Petitioner’s application fails to include such a certified copy. Therefore, the application is incomplete and is denied without prejudice.

Accordingly, IT IS this 8th day of January, 2021,

ORDERED the Clerk shall reopen this case for the sole purpose of deciding Petitioner’s outstanding motions; and it is further

ORDERED Petitioner’s motion to file an appeal out of time (ECF 19) is granted; and it is further

ORDERED that Petitioner’s application to proceed *in forma pauperis* on appeal (ECF 21) is denied without prejudice; and it is further

ORDERED that the Clerk shall serve this memorandum and order on Petitioner by regular U.S. mail; and it is further

ORDERED the Clerk shall reclose this case.

s/Peter G. Sheridan
PETER G. SHERIDAN, U.S.D.J.